

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA  
CIVIL MINUTES—GENERAL

Case No. EDCV 17-186-PSG (KKx)

Date: December 12, 2017

Title: *Victor Hernandez, et al. v. Daniel Cerda, et al.*

Present: The Honorable KENLY KIYA KATO, UNITED STATES MAGISTRATE JUDGE

DEB TAYLOR

Deputy Clerk

Not Reported

Court Reporter

Attorney(s) Present for Plaintiff(s):

None Present

Attorney(s) Present for Defendant(s):

None Present

**Proceedings: Order Supplemental Briefing re: Motions for Order to Show Cause Re: Contempt for Non-parties' Failure to Comply with Deposition Subpoenas [Dkts. 38, 47, 48, 49]**

On October 5, 2017, Plaintiffs filed a Request for an Order to set an Order to Show Cause regarding Contempt as to non-party Maximo Carcamo ("Carcamo"). ECF Docket No. ("Dkt.") 38. On November 10, 2017, Plaintiffs filed Requests for Orders to set Orders to Show Cause regarding Contempt as to non-parties Jorge Barrios ("Barrios") and Alberto Melendez ("Melendez").<sup>1</sup> Dkts. 47, 49. Plaintiffs request the Court (1) set an Order to Show Cause hearing requiring the non-parties to appear before this Court to explain why they should not be held in contempt of court ("Request for Order to Show Cause"); and (2) issue an Order compelling the non-parties to appear for a depositions no later than December 19, 2017 ("Motion to Compel"). Dkts. 38, 47, 49.

Under Federal Rule of Civil Procedure 45(c)(1), a nonparty to a civil suit may be subpoenaed to testify at a deposition. Fed. R. Civ. P. 45(c)(1). A subpoena served pursuant to Federal Rule of Civil Procedure 45 shall command each person to whom it is directed "attend and testify" at a "specified time and place." Fed. R. Civ. P. 45(a)(1)(A)(iii). A subpoena also must state the court from which it issued, the title of the action and its civil number, and set out the text of Rule 45(d) and (e). Fed. R. Civ. P. 45(a)(1)(A)(i), (ii), and (iv). Serving a subpoena requires "delivering a copy to the named person," which is often interpreted to mean

<sup>1</sup> The Court refers to Carcamo, Barrios, and Melendez collectively as "Non-Parties."

personal service. Fed. R. Civ. P. 45(b)(1); see Prescott v. Cty. of Stanislaus, No. 10-cv-00592 JLT, 2012 WL 10617, at \*3 (E.D. Cal. Jan. 3, 2012) (a majority of courts interpreting “delivering” to require personal service).

Here, as set forth below, it is unclear whether the subpoenas served on the Non-Parties set out the text of Rule 45(d) and (e) or were personally served on the Non-Parties.

#### **Non-Party Carcamo**

On June 6, 2017, Plaintiffs served Carcamo with a subpoena to appear for a deposition on June 9, 2017. Dkt. 38-1, Exs. 1, 2. However, it is unclear whether the June 9, 2017 subpoena (a) had the text of Federal Rule of Civil Procedure 45(d) and (e) attached, see id., Ex. 2, or (b) was personally served on Carcamo, see id., Ex. 1.

On August 26, 2017, Plaintiffs served Carcamo with a subpoena to appear for a deposition on October 5, 2017. Dkt. 38-1, Exs. 4, 5. However, it is unclear whether the October 5, 2017 subpoena (a) had the text of Federal Rule of Civil Procedure 45(d) and (e) attached, see id., Ex. 5, or (b) was personally served on Carcamo, see id., Ex. 4.

#### **Non-Party Barrios**

On October 8, 2017, Plaintiffs served Barrios with a subpoena to appear for a deposition on November 10, 2017. Dkt. 47-1, Exs. 1, 2. However, it is unclear whether the November 10, 2017 subpoena (a) had the text of Federal Rule of Civil Procedure 45(d) and (e) attached, see id., Ex. 1, or (b) was personally served on Barrios, see id., Ex. 2.

#### **Non-Party Melendez**

On November 2, 2017, Plaintiffs served Melendez with a subpoena to appear for deposition on November 10, 2017. Dkt. 49-1, Exs. 1, 2. However, it is unclear whether the November 10, 2017 subpoena (a) had the text of Federal Rule of Civil Procedure 45(d) and (e) attached, see id., Ex. 1, or (b) was personally served on Melendez, see id., Ex. 2.

Accordingly, Plaintiffs shall file a supplemental declaration sufficient to establish the Non-Parties were properly served with the subpoenas **no later than December 13, 2017 at 4:00 p.m.**

**IT IS SO ORDERED.**